IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

Crl.MC.No. 478 of 2006()

CC.977/2005 of JUDL. MAGISTRATE OF FIRST CLASS, KOTTAYAM

.....

PETITIONER: ACCUSED

---

1. JOJO.J, VELLOOKUNNEL, AGED 44 YEARS,
   S/O.JOSEPH GEORGE, BUSINESS, RESIDING AT
   VELLOOKUNNEL HOUSE, MY OWN COLONY, ERAYIL KADAVU,
   MUTTAMBALAM KARA, MUTTAMBALAM VILLAGE,
   KOTTAYAM TALUK, KOTTAYAM DISTRICT.

2. ANILKUMAR, S/O.PRABHAKARAN,
   KALLARAKKAL HOUSE,
   THEKKEKARA.P.O, PALA.

3. ANIL ABRAHAM,
   S/O.ABRAHAM, PARAMUNDAYIL HOUSE,
   COLLECTORATE.P.O, KOTTAYAM.

4. AYIL ABRAHAM, S/O.ABRAHAM,
   CHURUVALLIYIL HOUSE, AIMANAM.P.O,
   AIMANAM VILLAGE.

5. BIJU, S/O.MADHAVAN,
   VAKASSERIYIL HOUSE, ERAYIL KADAVU,
   MUTTAMBALAM VILLAGE, KOTTAYAM.P.O.

6. BABY.V.G., S/O.GOPALAKRISHNAN NAIR,
   VADASSERIYIL HOUSE, ERAYIL KADAVU,
   MUTTAMBALAM VILLAGE,
   KOTTAYAM.P.O.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: STATE AND COMPLAINANT

---

1. STATE OF KERALA,
   REPRESENTED BY THE SUB INSPECTOR OF POLICE,
   KOTTAYAM EAST POLICE STATION, REP. BY THE PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
   (INVESTIGATING OFFICER IN CRIME NO.303/05 OF
   KOTTAYAM EAST POLICE STATION).

2. GEORGE KURIAN,
S/O.KURIAN, VATTAKKUNNEL HOUSE,
ERAYIL KADAVU, MUTTAMBALAM VILLAGE,
KOTTAYAM.P.O.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUAHMMED.
SRI.K.P.DANDAPANI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/11/2006 ALONG WITH CRMC NO. 3732 OF 2006 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NOs. 478 & 3732 OF 2006

Dated this the 29th day of November, 2006

ORDER

These matters are interrelated and hence they are being taken up together for disposal as agreed by both sides.

2. Crl.M.C.No.478/06 is a petition filed by the petitioners who are accused 1 to 6 in a prosecution, inter alia, under Secs.427 and 379 read with Sec.149 of the IPC.

3. The crux of the allegations is that at about 12 mid night on 6/8/2005 a gate was removed and destruction of property belonging to the de facto complainant was committed by the accused persons acting in furtherance of their common object as members of an unlawful assembly.

4. Cognizance was taken on the basis of a final report submitted by the police after due investigation. The crux of the dispute is a pathway over which the petitioners claim right as transferees of a property from a person who had rights to walk over such pathway. It is alleged that they had removed the gate belonging to the complainant and indulged in destruction of property belonging to the de facto

complainant.

5. Having heard the learned counsel for the petitioners, in detail, I am certainly of opinion that there are no circumstances justifying the invocation of the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. Whether such gate was put up by the de facto complainant only for the purpose of denial of rights of the petitioners and whether the property alleged to have been destroyed was really a pathway are not questions which can be decided by this Court invoking the jurisdiction under Sec.482 of the Cr.P.C. I need only mention that the dismissal of this petition will not, in any way, fetter the rights of the petitioners to raise their claim for discharge under Sec.239 of the Cr.P.C. or to raise any appropriate defences in the trial, if they were not discharged.

6. Crl.M.C.No.3732/06 is filed by the petitioners who face allegations, inter alia, under Secs.341, 294-B and 506(i) read with Sec.34 of the IPC. The said case has also been registered on the basis of a private complaint filed by the de facto complainant before the learned Magistrate which has been referred by the learned Magistrate to the police under Sec.156

(3) of the Cr.P.C. After completion of the investigation, the police had filed the charge sheet/final report. Cognizance was taken by the learned Magistrate. The petitioners have not entered appearance before the learned Magistrate so far.

7. The crux of the allegations against the petitioners is that the petitioners illegally restrained the de facto complainant who was walking along the pathway which he had rights to use. It is further alleged that obscene abuses were showered on the de facto complainant and he was criminally intimidated. The petitioners pray that the powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings and to bring about premature termination of the proceedings.

8. The crux of the contention is that the allegations are not proper, true or correct. It is further alleged that, at any rate, the de facto complainant does not have a right to use the said pathway which he was allegedly using at the relevant time.

9. In this matter also, having heard the learned counsel for the rival contestants, I am not persuaded to agree that the powers under Sec.482 of the Cr.P.C. can or ought to be invoked to bring about premature termination of the prosecution. In

coming to this conclusion, I have taken note of the nature of the dispute between the parties. At the present stage and with the available inputs, it is impossible to come to the conclusion that the de facto complainant had no right whatsoever to use the pathway while using which he was allegedly made the victim of the offences by the petitioners. I am satisfied that this is also a case where the petitioners must stake their claim for discharge under Sec.239/240 of the Cr.P.C. or raise their defence in the trial which is to take place, if they are not discharged.

10. Finally, the learned counsel for the petitioners submit that the petitioners would suffer great prejudice, hardship and inconvenience if their personal appearance were insisted on all dates of posting by the learned Magistrate. It is for the petitioners to apply before the learned Magistrate for exemption from personal appearance. I find no reason to assume that the learned Magistrate would unreasonably insist on the personal appearance of the petitioners on all dates of posting. No special or specific directions appear to be necessary. I need only mention that if such application for exemption is filed, the learned Magistrate must dispose of the same on merits and in

accordance with law.

11. In the result, these Crl.M.Cs. are dismissed. But I may hasten to observe that the dismissal of these Crl.M.Cs. will not, in any way, fetter the rights of the petitioners to raise all appropriate contentions for claiming discharge/acquittal at the appropriate stage before the learned Magistrate.

(R. BASANT, JUDGE)

Nan/